

AMENDED IN ASSEMBLY AUGUST 7, 2000

AMENDED IN ASSEMBLY JULY 3, 2000

AMENDED IN ASSEMBLY JUNE 8, 2000

AMENDED IN SENATE MAY 17, 2000

AMENDED IN SENATE MAY 4, 2000

AMENDED IN SENATE APRIL 25, 2000

SENATE BILL

No. 1724

Introduced by Senator Dunn

(Coauthors: Assembly Members Honda and Machado)

February 23, 2000

An act to amend Sections 17530.5, 22251, and 22253 of, and to add Section 17530.6 to, the Business and Professions Code, to add Section 1799.1a to the Civil Code, and to add Section 18621.7 to the Revenue and Taxation Code, relating to confidential records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1724, as amended, Dunn. Confidential records: tax records.

(1) Existing law prohibits a business entity that performs bookkeeping services from disclosing the contents of any record, as specified, and provides a civil remedy to recover the actual damages, which in no case shall be less than \$500, for the violation of this provision as well as attendant court costs and reasonable attorneys' fees.

This bill would prohibit, subject to specified exceptions, the unrelated use, as defined, and the disclosure, including internal disclosures and those made to subsidiaries or affiliates, of information obtained from a tax return or submitted by a consumer, including that obtained through an electronic medium, in connection with a financial or other business-related transaction. This bill would additionally require the disposal of this information in a designated manner for confidentiality purposes *and would provide that this provision is inoperative if AB 2246 of the 1999–2000 Regular Session is enacted and becomes operative on or before January 1, 2001.* This bill would make a violation of its provisions subject to the civil remedy described in existing law and would specify that each violation constitutes a separate cause of action for which damages are recoverable under that remedy.

(2) Existing law provides for the regulation of tax preparers and makes a violation of specified provisions a crime, including one that prohibits any individual or business from disclosing information obtained in the business of preparing or assisting in the preparation of a federal or state income tax return, as defined, unless, among other specified circumstances, the taxpayer has consented to the disclosure. This bill would specify that each violation of the provisions regulating the practice of tax preparers constitutes a separate offense.

This bill would expand the definition of the business of preparing or assisting in preparing tax returns to include a person who files a return by electronic transmittal directly to the Franchise Tax Board or the Internal Revenue Service and would additionally prohibit those engaged in the business from disclosing either internally or to subsidiaries or affiliates, as defined, information obtained in the course of that business. This bill would specify that the information prohibited from disclosure by these provisions includes that obtained through an electronic medium and would require that a consent for disclosure by the taxpayer specify each person to whom the information will be disclosed and how that person will use the information.



This bill would make it a crime to dispose of information obtained in the business of preparing or assisting to prepare returns in a manner in which the identity of the taxpayer may be determined, as specified, *and would provide that this provision is inoperative if AB 2246 of the 1999–2000 Regular Session is enacted and becomes operative on or before January 1, 2001.*

(3) Under existing law, any return and other specified, related documents filed with the Franchise Tax Board using electronic technology are required to be in a form prescribed by the board.

This bill would prohibit the board from approving for electronic filing any proprietary filing software or electronic tax preparation forms that require a taxpayer to waive privacy protections or that require the sharing of information as a condition of access to that software or to those forms.

(4) Because this bill would enlarge the type of prohibited disclosures and would make it a crime to fail to dispose of certain information in a specified manner, the bill would both create a new crime and expand the definition of an existing crime, thereby imposing a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17530.5 of the Business and
2 Professions Code is amended to read:
3 17530.5. (a) It is a misdemeanor for any person,
4 including an individual, firm, corporation, association,
5 partnership, or joint venture, or any employee or agent
6 thereof, to disclose any information obtained in the
7 business of preparing federal or state income tax returns
8 or assisting taxpayers in preparing those returns,

1 including any instance in which this information is
2 obtained through an electronic medium, unless the
3 disclosure is within any of the following:

4 (1) Consented to in writing by the taxpayer in a
5 separate document that states each person to whom the
6 disclosure will be made and how that person will use the
7 information. If the taxpayer agrees, this separate consent
8 document may be in the form of an electronic record,
9 executed by an electronic signature as provided by Title
10 2.5 (commencing with Section 1633.1) of Part 2 of
11 Division 3 of the Civil Code.

12 (2) Expressly authorized by state or federal law.

13 (3) Necessary to the preparation of the return.

14 (4) Pursuant to court order.

15 (b) For the purposes of this section, a person is
16 engaged in the business of preparing federal or state
17 income tax returns or assisting taxpayers in preparing
18 those returns if the person does any of the following:

19 (1) Advertises, or gives publicity to the effect that the
20 person prepares or assists others in the preparation of
21 state or federal income tax returns.

22 (2) Prepares or assists others in the preparation of state
23 or federal income tax returns for compensation.

24 (3) Files a state or federal income tax return by
25 electronic transmittal of return data directly to the
26 Franchise Tax Board or to the Internal Revenue Service.

27 (c) A disclosure prohibited by this section includes a
28 disclosure made internally within the entity preparing or
29 assisting in preparing the return or made by that entity
30 to any of its subsidiaries or affiliates.

31 (d) For purposes of this section, “affiliate” means any
32 entity that, directly or indirectly, through one or more
33 intermediaries, controls, is controlled by, or is under
34 common control with, another entity.

35 (e) Contacting a taxpayer to obtain his or her written
36 consent to disclosure does not constitute a violation of this
37 section.

38 SEC. 2. Section 17530.6 is added to the Business and
39 Professions Code, to read:

1 17530.6. (a) Any person, including an individual,
2 firm, corporation, association, partnership, or joint
3 venture, or any employee or agent thereof, shall dispose
4 of any of the information described in Section 17530.5 in
5 a manner, such as burning, shredding, or other
6 appropriate means, so that the identity of the taxpayer
7 may not be determined from the disposed information
8 alone or in combination with other publicly available
9 information. A violation of this section constitutes a
10 misdemeanor.

11 (b) *This section shall not become operative if*
12 *Assembly Bill 2246 of the 1999–2000 Regular Session is*
13 *enacted and becomes effective on or before January 1,*
14 *2001.*

15 SEC. 3. Section 22251 of the Business and Professions
16 Code is amended to read:

17 22251. For the purposes of this chapter, the following
18 words have the following meanings:

19 (a) (1) Except as otherwise provided in paragraph
20 (2), “tax preparer” includes:

21 (A) A person who, for a fee or for other consideration,
22 assists with or prepares tax returns for another person or
23 who assumes final responsibility for completed work on
24 a return on which preliminary work has been done by
25 another person, or who holds himself or herself out as
26 offering those services. A person engaged in that activity
27 shall be deemed to be a separate person for the purposes
28 of this chapter, irrespective of affiliation with, or
29 employment by, another tax preparer.

30 (B) A corporation, partnership, association, or other
31 entity that has associated with it persons not exempted
32 under Section 22258, which persons shall have as part of
33 their responsibilities the preparation of data and ultimate
34 signatory authority on tax returns or that holds itself out
35 as offering those services or having that authority.

36 (2) Notwithstanding paragraph (1), “tax preparer”
37 does not include an employee who, as part of the regular
38 clerical duties of his or her employment, prepares his or
39 her employer’s income, sales, or payroll tax returns.

1 (b) “Tax return” means a return, declaration,
2 statement, refund claim, or other document required to
3 be made or filed in connection with state or federal
4 income taxes or state bank and corporation franchise
5 taxes.

6 (c) An “approved curriculum provider,” for purposes
7 of basic instruction as described in subdivision (a) of
8 Section 22255, and continuing education as described in
9 subdivision (b) of Section 22255, is one who has been
10 approved by the council as defined in subdivision (d), or
11 by the Bureau for Private Postsecondary and Vocational
12 Education under Chapter 7 (commencing with Section
13 94700) of Part 59 of Division 10 of the Education Code. A
14 curriculum provider who is approved by the tax
15 education council is exempt from Chapter 7
16 (commencing with Section 94700) of Part 59 of Division
17 10 of the Education Code.

18 (d) “Council” means the California Tax Education
19 Council which is a single organization made up of not
20 more than one representative from each professional
21 society, association, or other entity operating as a
22 California nonprofit corporation which chooses to
23 participate in the council and which represents tax
24 preparers, enrolled agents, attorneys, or certified public
25 accountants with a membership of at least 200 for the last
26 three years, and not more than one representative from
27 each for-profit tax preparation corporation which chooses
28 to participate in the council and which has at least 200
29 employees and has been operating in California for the
30 last three years.

31 SEC. 4. Section 22253 of the Business and Professions
32 Code is amended to read:

33 22253. (a) It is a violation of this chapter for a tax
34 preparer to do any of the following:

35 (1) Make, or authorize the making of, any statement
36 or representation, oral or written or recorded by any
37 means, which is intended to induce persons to use the tax
38 preparation service of the tax preparer, which statement
39 or representation is fraudulent, untrue, or misleading.

(2) Obtain the signature of a customer to a tax return or authorizing document which contains blank spaces to be filled in after it has been signed.

(3) Fail or refuse to give a customer, for his or her own records, a copy of any document requiring the customer's signature, within a reasonable time after the customer signs the document.

(4) Fail to maintain a copy of any tax return prepared for a customer for four years from the date of completion or the due date of the return, whichever is later.

(5) Engage in advertising practices which are fraudulent, untrue, or misleading, including, but not limited to, assertions that the bond required by Section 22250 in any way implies licensure or endorsement of a tax preparer by the State of California.

(6) Violate Section 17530.5 or 17530.6.

(7) Violate Section 7216 of Title 26 of the United States Code.

(8) Fail to sign a customer's tax return when payment for services rendered has been made.

(9) Fail to return, upon the demand by or on behalf of a customer, records or other data provided to the tax preparer by the customer.

(10) Knowingly give false or misleading information to the consumer pursuant to Section 22252, or give false or misleading information to the surety company pursuant to subdivision (a) of Section 22250, or give false or misleading information to the California Tax Education Council pursuant to Section 22255.

(b) Each violation of this section constitutes a separate offense.

SEC. 5. Section 1799.1a is added to the Civil Code, to read:

1799.1a. (a) No person, including an individual, firm, corporation, association, partnership, or joint venture, or any employee or agent thereof, shall disclose information obtained from a federal or state income tax return or any information obtained from a tax schedule submitted with the return by a consumer in connection with a financial

1 or other business-related transaction unless the disclosure
2 is within any of the following:

3 (1) Consented to in writing by the consumer in a
4 separate document that states each person to whom the
5 information will be disclosed and how that person will use
6 the information. If the consumer agrees, this separate
7 consent document may be in the form of an electronic
8 record, executed by an electronic signature as provided
9 by Title 2.5 (commencing with Section 1633.1) of Part 2
10 of Division 3 of the Civil Code.

11 (2) Authorized or required by state or federal law.

12 (3) Necessary to complete or service the financial or
13 business-related transaction or to effect, administer, or
14 enforce a financial or business-related transaction
15 requested by the consumer.

16 (4) Pursuant to court order.

17 (5) Required to complete any of the transactions
18 described in subparagraphs (A) to (D), inclusive, by a
19 person, including an individual, firm, corporation,
20 association, partnership or joint venture, if the disclosure
21 is made solely for that purpose. The provisions of this
22 section apply to any person, including an individual, firm,
23 corporation, association, partnership, or joint venture,
24 and any employee or agent thereof, receiving
25 information as a result of a disclosure authorized by this
26 paragraph.

27 (A) A proposed or actual sale, merger, transfer, or
28 exchange of all or a portion of a business or operating unit.

29 (B) A proposed or actual securitization or secondary
30 market sale, including the sale of servicing rights.

31 (C) To provide information to insurance rate advisory
32 organizations, guaranty funds or agencies, rating
33 agencies, and other persons assessing compliance with
34 industry standards.

35 (D) To protect against or to prevent actual or
36 potential fraud and unauthorized transactions and claims
37 and for institutional risk control activities.

38 (b) No unrelated use shall be made of a federal or state
39 tax return or any information obtained therefrom or any
40 information submitted with the return by a consumer in

1 connection with a financial or other business-related
2 transaction. “Unrelated use” means any use that is not
3 necessary to effect, administer, or enforce the financial or
4 other business-related transaction with the consumer or
5 that is beyond the scope of the stated purpose to which
6 the consumer consented for the use of the return or any
7 other information he or she submitted.

8 (c) (1) For purposes of this section, the following
9 definitions shall apply:

10 (A) “Affiliate” means any entity that, directly or
11 indirectly, through one or more intermediaries, controls,
12 is controlled by, or is under common control with,
13 another entity.

14 (B) “Consumer” means an individual who requests or
15 obtains financial or other business-related services.

16 (C) “Tax return” means a return, declaration,
17 statement, refund claim, or other document required to
18 be made or to be filed in connection with state or federal
19 income taxes or state bank and corporation franchise
20 taxes.

21 (2) A disclosure prohibited by this section includes a
22 disclosure made internally within the entity or by that
23 entity to any of its subsidiaries or affiliates.

24 (3) The information described in subdivision (a)
25 includes that information obtained through an electronic
26 medium.

27 (d) No person, including an individual, firm,
28 corporation, association, partnership, or joint venture, or
29 any employee or agent thereof, shall dispose of any of the
30 information described in subdivision (a) in a manner in
31 which the identity of the consumer may be determined
32 from the disposed information alone or in combination
33 with other publicly available information. *This*
34 *subdivision shall not become operative if Assembly Bill*
35 *2246 of the 1999–2000 Regular Session is enacted and*
36 *becomes effective on or before January 1, 2001.*

37 (e) The civil remedies in Chapter 3 (commencing
38 with Section 1799.2) shall be applicable to a violation of
39 this section. Each violation of this section shall constitute

1 a separate cause of action for which damages are
2 recoverable.

3 SEC. 6. Section 18621.7 is added to the Revenue and
4 Taxation Code, to read:

5 18621.7. The Franchise Tax Board shall not approve
6 ~~for electronic filing to its designated portal for receiving~~
7 ~~electronic returns,~~ *for electronic filing* any proprietary
8 filing software or electronic tax preparation forms that
9 require a taxpayer to waive any privacy protections or
10 that require the sharing of information as a condition of
11 access to that software or to those electronic tax
12 preparation forms. It is the intent of the Legislature in
13 enacting this section that the Franchise Tax Board accept
14 no electronic filing that does not contain privacy
15 protections equal to those with which the board is
16 required to comply.

17 SEC. 7. No reimbursement is required by this act
18 pursuant to Section 6 of Article XIII B of the California
19 Constitution because the only costs that may be incurred
20 by a local agency or school district will be incurred
21 because this act creates a new crime or infraction,
22 eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition
25 of a crime within the meaning of Section 6 of Article
26 XIII B of the California Constitution.

